

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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July 2, 2003

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W. CY-B402
Washington, DC 20554

RE: WC Docket No. 03-138

Dear Ms. Dortch:

Enclosed for filing in the above-captioned docket please find the Attorney General's Comments. Per the Public Notice dated June 19, 2003, this document is being submitted by electronic mail only.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Moody".

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MEM:jas
Enc.

Michael A. Cox
Attorney General
State of Michigan
SBC Communications, Inc.
Michigan

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the Application by
SBC Communications Inc., Michigan
Bell Telephone Company, and
Southwestern Bell Communications
Services, Inc., for Provisions of In-Region,
InterLATA Services in Michigan

WC Docket No. 03-138

**COMMENTS OF
MICHIGAN ATTORNEY GENERAL MICHAEL A. COX**

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Services, Inc., for Provisions of In-Region,
InterLATA Services in Michigan

WC Docket No. 03-138

**COMMENTS OF
MICHIGAN ATTORNEY GENERAL MICHAEL A. COX**

Michael A. Cox, as the duly elected Attorney General of the State of Michigan, submits the following comments pursuant to the Federal Communications Commission's (FCC) June 19, 2003 Public Notice issued regarding SBC Communications, Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (Michigan Bell) application for authorization to provide in-region, interLATA service in the State of Michigan, pursuant to section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271.

In its June 19, 2003 Public Notice, the FCC notes that "[b]ecause Michigan Bell's instant application follows closely in time to its recently withdrawn filing in WC Docket No. 03-16, and this application relies largely on the same evidence that supported its previous application, we find it appropriate to adopt an expedited comment schedule." Accordingly, the Attorney General relies upon and attaches its comments filed in WC Docket No. 03-16.

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State of Michigan
SBC Communications, Inc.
Michigan

The Attorney General, however, reiterates its support of the Michigan Public Service Commission's (MPSC) finding that its conclusions regarding Michigan Bell's compliance with Section 271 of the FTA and the rules and regulations promulgated by the FCC are based on the recognition that "the Michigan competitive market is significantly dependent on the availability of the Unbundled Network Element Platform." (Report of the Michigan Public Service Commission, January 13, 2003, MPSC Case No. U-12320, p 3). In fact, as recently as June 2003, the MPSC explained that while competition in the basic local exchange industry in Michigan is growing, "this has occurred with vigilant regulatory oversight to ensure that competitors are able to obtain the access to needed elements of the ILEC network without ILEC interference or obstruction." (Report on the Status of Competition in Telecommunication Service in Michigan, June 2003, p 8).

The FCC's February 20, 2003 press release, concerning adoption of rules on incumbent local exchange carriers' (incumbent LEC's) obligations to make elements of their networks available on an unbundled basis to new entrants, provides for the continued existence of switching, a key UNE-P element, upon a state commission's rebuttal of a national finding of no impairment. Relying upon this continued viability of UNE-P as provided under the FCC's new

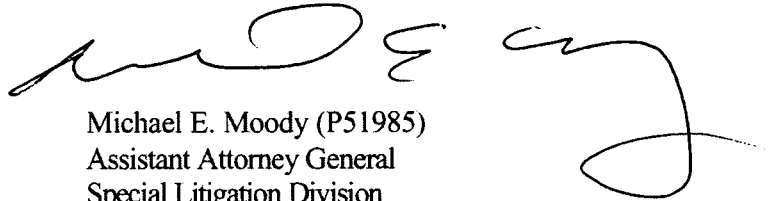
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rules and incorporating his February 6, 2003 comments in WC Docket No. 03-16, the Attorney General supports Section 271 approval for Michigan Bell in Michigan because it will enhance competition for long distance, and the bundling of telecommunications services.

Respectfully submitted,

Michael A. Cox
Attorney General
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J. Peter Lark (P26970)
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A handwritten signature in black ink, appearing to read "Michael E. Moody", is written over the typed name and title of Michael E. Moody.

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July 2, 2003
FCC 03-138 AG Comments 7-2-03

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SBC Communications, Inc.
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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Application of SBC Communications, Inc.)	
Pursuant to Section 271 of the)	WC Docket No. 03-16
Telecommunications Act of 1996)	
To Provide In-Region, InterLATA)	
Services in Michigan)	

**COMMENTS OF
MICHIGAN ATTORNEY GENERAL MICHAEL A. COX**

Michael A. Cox, as the duly elected Attorney General of the State of Michigan, submits the following comments pursuant to the public notice issued regarding the application of SBC Communications, Inc. pursuant to Section 271 of the Telecommunications Act of 1996 to provide in-region, interLATA services in Michigan.

SBC Communications, Inc.'s (SBC) application for in-region, long distance authority represents a significant step in the process of implementing the pro-competitive and pro-consumer policy established by the Federal Telecommunications Act of 1996. In light of the regional structure of SBC's operation support systems in the five Ameritech states of Michigan, Ohio, Illinois, Indiana and Wisconsin, the resolution of SBC's application will have a tremendous impact on the continuing efforts to open all telecommunications markets to competition not only in the State of Michigan, but throughout the above-noted five-state region and beyond.

These comments are based on the Michigan Attorney General's participation in the key regulatory and judicial proceedings in Michigan relating to telecommunications competition. As an advocate of full, fair and meaningful competition, the Michigan Attorney General urges the dismantling of all barriers to entry in the telecommunications market. Specifically, the Michigan Attorney General advocates that ample opportunity be available for consumers to have access to the telecommunications service providers of their choice.

The Michigan Attorney General has statutory responsibilities with respect to the protection of the public interest of the people of the State of Michigan. MCL 14.28; MSA 3.181 and MCL 14.101; MSA 3.211. As the primary enforcer of state antitrust laws, the Michigan Attorney General is duty-bound to represent the competitive interests of the state and its citizens. Indeed, the Michigan Attorney General is committed to vigorously enforcing provisions of state law and MPSC orders that will promote competition and penalize those who would violate the law or orders. The benefits to consumers should not be endangered in the battles among competing special interests.

SBC's entry into the in-region long distance market in Michigan should further consumers' interests by increasing competition in that market, so long as the Company is prevented from obtaining unfair advantages by virtue of having been the dominant incumbent carrier in the basic local exchange market in Michigan. The issue to be addressed in this proceeding is not whether SBC should be authorized to enter the long distance market in Michigan, but under what conditions should that authority be granted. While aware of the

benefits of increased long distance interLATA competition, Congress did not authorize immediate entry into those markets in the Federal Telecommunications Act of 1996 (FTA). Rather, the FTA held out long distance authority as an incentive to induce the Regional Bell Operating Company's (RBOCs) such as SBC to fully cooperate in the task of opening the local exchange markets to competition.

The fundamental policy question that the Federal Communications Commission (FCC) must resolve in this proceeding is whether SBC has proved that it has discharged all of its market-opening obligations in Michigan such that the FTA's goal of introducing effective competition into local exchange markets has been fully and irreversibly accomplished in the State of Michigan.

Based on the participation of the Michigan Attorney General in proceedings before the Michigan Public Service Commission (MPSC) to examine the status of SBC's compliance with the competitive checklist in Section 271 of the FTA, it is the Michigan Attorney General's judgment that the FCC's approval of SBC's application should be predicated upon the existence of meaningful safeguards to ensure that the competitive gains made to date are not lost after SBC is granted authority to provide in-region interLATA services. Specifically, the Michigan Attorney General notes that the current uncertainty over the continued availability of the unbundled network elements – platform (UNE-P) raises the spectre of a reduction of competition in the local exchange market in the foreseeable future. UNE-P service arrangements offer a solution to prohibitive co-location costs and allow competitive local exchange carriers (CLEC) to

mirror the flexibility of a self-provided switch. With the UNE-P, CLECs in Michigan are able to lease both the subscriber loop and the switching functions from SBC, and have SBC physically interconnect these separate functions to form a working “dial tone” without requiring a CLEC co-location presence in SBC's central office. Many of the CLECs operating in Michigan, if not all, use UNE-P as the primary method by which they serve residential customers. Indeed, as Table 1 below shows, 66.76% of CLEC residential and small business customers in SBC’s service territory in Michigan are served over UNE-P.

Table 1					
CLEC Provision of Residential Service in SBC Territory by Service Method					
Holding Company	State	CLEC Residential & Small Business Lines Provided Over Resale	CLEC Residential & Small Business UNE-L Lines	CLEC Residential & Small Business UNE-P Lines	Percent of CLEC Residential & Small Business Served Over UNE-P
SWBT	Arkansas	33,162	12,999	19,402	29.59%
Pacific Bell	California	177,536	293,357	55,223	10.50%
Ameritech	Illinois	160,949	219,187	298,905	44.02%
Ameritech	Indiana	27,404	24,686	6,801	11.55%
SWBT	Kansas	72,927	6,102	64,054	44.77%
Ameritech	Michigan	99,314	110,935	422,281	66.76%
SWBT	Missouri	81,833	17,620	42,776	30.08%
Ameritech	Ohio	48,173	78,739	49,048	27.87%
SWBT	Oklahoma	43,828	6,935	23,529	31.67%
SWBT	Texas	236,156	114,953	1,174,875	76.99%
Ameritech	Wisconsin	30,556	119,430	11,049	6.86%
Total SBC		1,011,838	1,004,942	2,167,944	51.81%
Notes: Data for SBC excludes Nevada, SNET Connecticut.					
Source: Miscellaneous data from FCC Form 477, “Selected RBOC Local Telephone Data,” June 30, 2002. Available at: http://www.fcc.gov/wcb/iatd/comp.html					

As the FCC considers SBC's 271 application, the Michigan Attorney General strongly believes that it is important to note that elimination of UNE-P at this juncture would irreparably harm the nascent competition that currently exists in Michigan.

The fact of the matter is that the incumbent local exchange carriers (ILECs) relied upon the existence of UNE-P competition in order to gain in-region long distance authority under Section 271 of the FTA. *See, In the matter of the Application of Verizon New Jersey, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, rel. June 24, 2002, at para. 13. Ironically, after witnessing the importance of UNE-P in facilitating CLEC entry and competition, the ILECs now want to change the rules and have challenged the requirement that they provide UNE-P arrangements. Indeed, after having their position rejected by the United States Supreme Court, the ILECs are now asking the FCC to eliminate the UNE-P arrangement altogether. *Verizon Communications, Inc., et al v Federal Communications Commission, et al*, 535 US 467; 122 S Ct 1646; 152 L Ed 2d 701 (2002).

As the FCC deliberates over SBC's request for authority to provide in-region long distance service in Michigan, it is imperative that it consider the unassailable fact that if it grants the ILEC's request with respect to the UNE-P, while granting SBC's Section 271 application, the FCC would essentially be putting the brakes on the emerging competition that currently exists in Michigan. In the absence of UNE-P, CLECs that have built business plans and customer bases

dependent on the availability of UNE-P will be left with little recourse but to abandon the Michigan basic local exchange market.

On January 13, 2003, the MPSC issued a report and order in which it concluded that SBC is in compliance with the 14-point checklist of Section 271 of the FTA. It is significant that the MPSC's recommendation that SBC be authorized to provide in-region long distance service in Michigan included a caveat: "[T]he Michigan competitive market is significantly dependent on availability of the Unbundled Network Element-Platform (UNE-P)." The MPSC agrees with the Michigan Attorney General that elimination or severe curtailment of UNE-P would adversely impact Michigan's competitive market. Consequently, the MPSC stated that its affirmative recommendation that SBC be granted Section 271 approval "is predicated on the FCC's continuation of policies and rules that allow competitors access to UNE-P for the foreseeable future and throughout an orderly transition to facilities-based competition." (MPSC's letter to the FCC, dated January 13, 2003). The Michigan Attorney General believes that it is important for the FCC to pay particular attention to the MPSC's caveat.

On January 2, 1997, Ameritech Michigan (now known as SBC) filed with the FCC its initial application to provide in-region interLATA services in Michigan pursuant to Section 271 of the FTA. The FCC dismissed SBC's initial application without prejudice at the request of the Company. On May 21, 1997, SBC filed with the FCC its second application for Section 271 authority. In its August 19, 1997 order the FCC denied SBC's request to provide in-region long-distance service in Michigan. In 2000, SBC informed the MPSC that it was preparing to

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file a third Section 271 application with the FCC. For purposes of preparing for its consultation with the FCC, on February 9, 2000, the MPSC issued an order opening the docket in Case No. U-12320 so that SBC and other interested parties may file any documents that bear on SBC's compliance or noncompliance with the Section 271 competitive checklist and on the status of competition in the Company's service territory.

In its February 9, 2000 order the MPSC required the parties to address a number of specific issues. Among the issues the MPSC asked the parties to address was performance assurance measures, "including a self-effectuating system to prevent backsliding." While the MPSC reports that competitive market share in SBC's Michigan service territory is more than 20%, the Michigan Attorney General believes that it is important to have meaningful safeguards in place to ensure that no backsliding occurs after SBC is granted Section 271 approval, and competitive market share continues to grow. To that end, the Michigan Attorney General believes that the FCC should establish a rigorous compliance plan that includes good performance measurement standards and remedy plans that would serve as a disincentive to any backsliding. During the last three years the Michigan Attorney General has actively participated in Case No. U-12320 before the MPSC. As the FCC deliberates over SBC's 271 application, the

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Michigan Attorney General is prepared to share the benefit of the office's participation in the proceedings before the MPSC. The Michigan Attorney General supports Section 271 approval for SBC in Michigan because it will enhance competition for long distance, and the bundling of telecommunications services. It is expected that with diligence by the Michigan Attorney General's office and the MPSC, authorizing SBC to provide in-region long distance service in Michigan will not harm local competition. The Michigan Attorney General understands that there are several steps being taken to assure no backsliding such as: a) a comprehensive set of wholesale performance measures have been established and will be vigilantly monitored; b) a remedy plan is in place to provide financial penalties for SBC nonperformance; c) there will be expeditious processing of any complaints regarding anticompetitive behavior; and d) the MPSC's January 13, 2003 Order indicates that further CLEC support enhancement will be enforced.

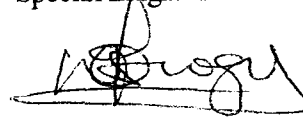
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Again, the Michigan Attorney General wishes to underscore the fact that the MPSC, consumers, many other state commissions, competitive providers, and the Michigan Attorney General's office rely on the combination of UNE-P and anti-backsliding rules.

Respectfully submitted,

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February 6, 2003
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